

Consumer protection in digital transactions in Medan

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Abstract. The availability and security of the internet are the factors in determining the prosperity of a city. Medan has a high number of internet users, with 994,000 of the 2.2 million population having access to it (2017 data). Medan ranks third in the five largest online shopper cities in Indonesia. Therefore, Medan is quite potential and competitive in conducting digital business activities, also known as e-commerce. Such potential must be secured with the applicable law, especially protection for consumer law. This is legal research using a normative juridical method. Data was collected through a literature review and analyzed qualitatively. The results show that the government has already provided legal instruments in online transactions through Law No. 8 of 1999 concerning Consumer Protection (CP Law) and Law No. 11 of 2008 concerning Electronic Information and Transactions as amended by Law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions (EIT Law) and Government Regulation Number 82 of 2012 concerning Electronic System and Transaction Applications. With a large number of internet users and online shoppers in Medan, the government must improve information technology-based infrastructure and e-commerce traders. Digital transaction activities should also be supported by strengthening the internet network security.

1. Introduction

The development of science and technology, especially information and communication technology, has created a borderless world. The technology has also changed the character and behavior of the people. It is becoming easier for an individual to carry out transactions; one can simply use a computer or even a phone to have his needs delivered to his doorstep. This has made the internet to become the basic need for a large number of people.

Internet user behavior survey held in 42 cities in Indonesia by the Indonesian Internet Service Provider Association (IISPA) in 2016 showed that 98.6% of the population had known the internet as a place for business transaction and 63.5% has conducted online transactions [1]. Of the 262 million people in Indonesia, there were 54.68% (around 143.26 million people) internet users in 2017. Based on the results of the 2017 survey conducted by an online shopping service provider, Medan is one of the largest online shopper cities in Indonesia. Jakarta ranked first with 41.94%, followed by Surabaya (20.90%), Medan (7.76%), Bandung (7.72%), and Makassar (4.42%) [2]. According to Nielsen data in November 2017, the population of internet users in Medan was 994,000 of the 2.2 million population [3]. A large amount of internet users in Medan has created a competitive and potent environment for the digital industry.

There are many factors that attract people to online transactions, such as the simple procedure of transactions, low costs, trust, and security in transactions. However, considering the constant advance of technology and the ease of access to the internet, fraudulent acts in online transactions are also increasing. There are many online traders that make profits from fraud.

From a legal perspective, it is only realized that a transaction requires a document as written evidence when a problem occurs. A case that often occurs is a consumer that has paid the agreed sum of money only to receive items that are not by the order or receiving them exceed the agreed date. Communication is also problematic; contact is often lost immediately after the consumer pays the agreed sum of money. ¹⁵

Compared to traders, consumers have greater risks; their rights are very vulnerable. ¹ This is due to their very weak bargaining position so that their rights are susceptible to violation. Through Law Number 8 of 1999 concerning Consumer Protection (CP Law), the Government has protected consumers by establishing consumer rights and producer obligations, including determining the number of restrictions on distributing goods and/or services that traders must adhere to.

Hence, what about the protection of consumers in e-commerce activities in the current digital industrial era, especially in Medan?

2. Method

This study uses the doctrinal law (normative legal) method. In this method, literature is considered as the basic data which is classified as secondary data. This is normative juridical research that includes research on legal principles.

3. Results and discussion

3.1. Consumer protection

The word "consumer" or *consument/konsument* (in Dutch) can simply be interpreted as the end-user of an item or service. According to CP Law, a consumer is any person who uses goods and/or services available in society for the sake of themselves, their family, other people, and other living beings but not for trading. The Consumer Protection Law defines consumers as end-users, namely individuals or entities, whether legal or non-legal entities, who use goods and/or services not for the purpose of being re-traded or to produce other goods and/or services. Traders are individuals or business entities that are legal or non-legal entities established and domiciled or conducted business activities in the legal territory of the Republic of Indonesia, both individually and jointly, through agreements of conducting business activities in various economic sectors. ¹⁸

Consumer protection is any effort that guarantees legal certainty to provide protection to consumers. Hopefully, consumer protection will negate the arbitrary actions and exploitations towards consumers in achieving the traders' own goals. Legal protection is regulated by law to prevent violations. In order to avoid violations that can harm the public, legal rules should be enforced to ensure that legal protection applies for a certain period. Therefore, legal protection is related to law enforcement; the success of law enforcement will provide legal protection for society. It can also be argued that legal protection is related to the actions of the state to (enforcing state law exclusively) provide assurance of the rights for a person or a group of people [4].

3.2. Consumer protection in digital transactions

Conceptually, the digital transactions are e-commerce transactions which can be defined as forms or ways of a transaction without using paper but rather using electronics or the internet. From an economic perspective, digital transactions or e-commerce can be interpreted as a modern business methodology that seeks to meet the organizational needs of traders and consumers to reduce costs, improve the quality of goods and services, and increase the speed of deliveries. ¹⁷

To fulfill the need for e-commerce international laws, the UN General Assembly validated the UNCITRAL Model Law on Electronic Commerce 1996 (MLEC) through Resolution 51/162 on 16 December 1996. MLEC was formed as a basic rule to regulate the validity, recognition, and the effects of electronic messaging based on computer use in commerce. Furthermore, Indonesia applied Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning

Electronic Information and Transactions (EIT Law) and Government Regulation Number 82 of 2012 concerning Electronic System and Transaction Applications (GR No. 82 of 2012). The regulation states that electronic transactions are legal actions carried out by using computers, computer networks, and/or other electronic media.

Given the vulnerability of the rights and interests of consumers in e-commerce, legal protection must be provided for consumers. This protection, besides being regulated in CP Law, is also specifically regulated and stipulated in the EIT Law and GR No. 82 of 2012.

In fact, every electronic transaction is contained in an electronic contract; an electronic agreement between the parties. Electronic transactions outlined in electronic contracts bind involved parties (Article 18 of the EIT Law). Article 1338 of the Civil Code states that an electronic contract has the same binding power as the law for the parties involved.

Article 20 of the EIT Law determines that an electronic transaction is deemed to have occurred when the offer of the transaction has been sent by the sender, received, and approved through an electronic statement by the recipient. In this condition, the acceptance theory is adopted. The Elucidation of Article 20 explains that electronic transactions occur when an agreement between the parties is reached in the form of data checking, identity, personal identification number (PIN) or password.

The provisions in Article 20 and the aforementioned explanations have stated that an electronic contract is a type of a consensual agreement that is subjected to the principle of consensualism. More explicitly, applying the principle of consensualism in electronic contracts has been stipulated in Article 50 GR No. 82 of 2012 by determining that an electronic transaction occurs when the involved parties have reached an agreement. An agreement is reached when a transaction offer sent by the sender has been received and approved by the recipient of the electronic system user.

The Elucidation of Article 50 states that accepting an agreement is conducted through an electronic click approval by the user of the electronic system. Thus, legal protection starts from the time of electronic approval.

Electronic transactions occur when an agreement is reached by the parties, or “when the offer has been received and approved by the recipient”. Based on this provision, which is also regulated in the Civil Code, the basis of electronic transactions is an agreement. Protection of e-consumers takes effect from the time the agreement is stated, namely when an agreement between the consumer and the trader starts [5].

Specifically, Article 47 GR No. 82 of 2012 has stipulated a condition of a valid electronic contract, which says there should be: (a) an agreement between the parties, (b) eligible legal subjects, and (c) a certain thing the parties agreed upon.

The object of a transaction must not conflict with the legislation, ethics, and public order. The aforementioned Article 47 is a further elaboration of Article 1320 of the Civil Code which regulates the legal requirements of a valid agreement, namely the agreed terms and conditions, eligible parties to act in law, a certain thing the parties agreed upon, and a reasonable, lawful cause.

Determining an eligible party for an electronic transaction may be an obstacle since the parties do not meet in person. For this reason, the traders should require a minimum age limit of consumers. If a party is not eligible for an electronic transaction and at any point, there is a party that feels disadvantaged; then he can request to cancel the agreement [6].

Consumer right protection and trader obligations as stipulated in CP Law Article 4 and Article 7 and Article 46 GR No. 82 of 2012 should be considered when making an electronic transaction. The regulations and law state that electronic transactions should always be based on good intention, the principle of prudence, transparency, accountability, and appropriateness.

Article 48 GR No. 82 of 2012 stipulates that electronic contracts made in standard clauses must be in accordance with the provisions concerning standard clauses as regulated in the legislation. The Elucidation of Article 48 states that the legislation is Law No. 8 of 1999 concerning Consumer

Protection as regulated in Article 18 stipulating that in offering goods/services, traders are prohibited from creating or specifying standard clauses in any form of document and/or agreement.

Traders are prohibited from presenting standard clauses that are difficult to be seen or read, or difficult to understand. Presenting clear and understandable clauses can protect the consumer rights on transparency and the right to information and becomes an obligation of the business actors as stipulated in GR No. 82 of 2012.

Civilly, the legal protection to consumers in digital transactions is the material provisions regarding default or broken promises that give rights to the aggrieved party, in this case, the consumers, to sue the trader for: (a) canceling the agreement, (b) fulfilling the agreement, (c) a compensation, (d) cancelling the agreement plus a compensation, (e) fulfilling the agreement plus a compensation. In addition, the provisions of illegal acts in Article 1365 of the Civil Code in connection with Arrest HR of 31 January 1919 can also be used to protect the rights and interests of consumers in digital transactions or e-commerce.

Criminally, EIT Law has regulated and stipulated special criminal offenses relating to electronic transactions as regulated in Chapter XI Article 45 to Article 52 with a penalty ranging from 6 (six) to 10 (ten) years in jail [7].

Legal protection to consumers in electronic transactions can be done by filing a default lawsuit, on the grounds that the trader has not fulfilled their legal obligations in electronic contracts. The failure to fulfill the obligation means that there has been a violation of rights for the other party (the consumer) which has a legal consequence of causing losses. Article 38 and Article 39 of the EIT Law and Article 23 of CP Law have provided legal protection for people suffering losses in e-commerce activities. Moreover, CP Law Article 4 letter (e) has defined the consumer rights covering the right to obtain advocacy, protection, and a proper resolution on consumer disputes [8].

The high economic growth and a large number of internet users in Medan create highly potential e-commerce activities. Consumers and traders are greatly assisted by the e-commerce facilities because it saves time, provides choices, and is more informative. The high consumer trust in the online payment system and e-commerce activities in Medan should be able to reduce the potential for disputes in the future.

However, an unpredictable amount of disputes may arise in the future. One way to prevent these disputes is for the government to optimize related agencies, such as the Consumer Dispute Settlement Agency (CDSA) as stated in Law No. 8 of 1999 in handling the disputes. The CDSA, as one of the National Government agencies, must be able to resolve any types of online disputes arising from e-commerce activities. This can be conducted by increasing the capacity building of CDSA personnel to be more familiar with e-commerce activity.

4. Conclusion

In e-commerce transactions, consumers have a very weak bargaining position and greater risks than traders. The importance of legal protection for consumers is generally based on actuality and urgency consideration. The legal regulations to protect consumers in current e-commerce transactions are CP Law, EIT Law, and GR No. 18 of 2012. The three legal instruments aimed at creating legal certainty in business transactions and protecting consumers of e-commerce transactions.

Currently, micro, small, and medium enterprises (MSMEs) are the pillars supporting the economic growth of Indonesia, including Medan. Online-based MSMEs enable business owners to directly sell their products to consumers, which in turn generate faster and bigger profits. In that very competitive condition, certain abilities and skills are essentially required. Furthermore, the network security system should also be strengthened to create secure and practical digital transactions. Finally, the Government of Medan should foster the Consumer Dispute Settlement Agency to specifically handle online business disputes.

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